

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 557 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDULSATTAR ABDULJABBAR

ANSARI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/03/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner who is the detenu, calls in question the legality and validity of the detention order, passed by the Commissioner of Police, Ahmedabad City on 30th June, 1997, invoking his powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short "the Act"); consequent upon which the petitioner came to be arrested

and at present he is under detention.

2. In order to appreciate the rival contentions, necessary facts in brief may be stated. The Commissioner of Police for the city of Ahmedabad was having the information that the petitioner by his nefarious activities was disturbing the public peace and terrorising the people. The people were feeling insecure. He, therefore, inquired into the matter and examined the different records of the Police Stations under him. He could know that about 10 complaints were lodged against the petitioner of the offences punishable under Sections 379, 392, 394, 120-B of the Indian Penal Code and Section 25(1)(b) of the Arms Act as well as Section 135 of the Bombay Prohibition Act, registered in Naranpura, Maninagar, Navrangpura, Ellisbridge, Gomtipur, Sherkotda and DCP Police Stations, and also with the Khambhat Police Station. The Commissioner of Police having come to know about such complaints made detailed inquiry, and after inquisition, he could note that the petitioner was a head-strong person and by his subversive activities, he was disturbing the public order and terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order and spreading pandemonium were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuasion and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After the deep inquiry, the Police Commissioner found that to curb the anti-social subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present, he is in custody.

3. On behalf of the petitioner, challenging the legality and validity of the order of detention, the petitioner has raised several grounds in his petition, and to justify the case advanced, the learned advocate representing the petitioner submitted at length. After I put up several queries, both the learned advocates representing the parties tapered of their submissions, confining to the only point namely exercise of privilege under Section 9(2) of the Act. I will therefore confine

to that point alone going to the root of the case, and would not dwell upon the other points.

4. Before I proceed, it would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts, but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at anytime by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking

his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N.Patel Vs. State of Gujarat & Others 35(1) [1994(1)] G.L.R. 761. may be made.

5. In view of such law, the authority passing the detention order has to satisfy the Court filing the affidavit that it was keeping safety of the witnesses in mind absolutely necessary in the public interest to suppress the particulars. In this case, it is pertinent to note that the Police Commissioner has not filed his affidavit and explained the circumstances justifying the exercised of privilege by non-disclosure. Hence this Court is entitled to infer everything against the case of the detaining authority. When that is the case, it can be assumed that without any just cause the particulars are suppressed and privilege is exercised without any application of mind. Without the particulars about the source, the detenu could not decide whether to allege that the materials collected were not reliable and usable against him. In the result, the continued detention is illegal and the same is liable to be quashed and set aside.

6. For the aforesaid reasons, this petition is allowed. The order of detention passed on 30th June, 1997 by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule accordingly made absolute.
